

1992

The Promark Group, Inc. and Utah Component Sales Inc. v. Harris Corporation : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

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COURT OF APPEALS

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES,
ORDINANCES AND RULES

Appellants have located no constitutional provisions, statutes, ordinances or rules which they rely on as being determinative in this case.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

-----ooOoo-----

THE PROMARK GROUP, INC. a
Colorado corporation formerly
known as COMPONENT SALES,
INC., and UTAH COMPONENT
SALES INC., a Utah
corporation,

Plaintiffs/Appellants,

vs.

HARRIS CORPORATION,

Defendant/Appellee,

Case No. 92-0053

Priority No. 16

-----00000-----

BRIEF OF APPELLANT

Appeal from summary judgment in favor of the Defendant/Appellee in the Third Judicial District Court, Salt Lake County, Judge Michael R. Murphy presiding.

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JURISDICTION OF THE COURT

This court has jurisdiction in this matter pursuant to Utah Code Ann. §78-2a-3(j) as amended.

STATEMENT OF ISSUES

1. Summary judgment was improper because there were numerous genuine issues of fact present in the case. The court also improperly applied the law to the presumed facts in the case. The disputed issues of fact include:

(a) Whether the contract between the parties was an exclusive contract.

(b) The amount of commissions to which Plaintiffs are entitled.

(c) Whether Plaintiffs are entitled to commissions on sales in the territory except those specifically excluded by written contract.

(d) Whether the territories of Utah, Idaho, and Montana have ever been terminated from Plaintiff's contract, and if so, when.

(e) Whether the Defendant is entitled to an offset as a result of the Appellant's settlement with Harris Marketing.

The Utah Appellate Courts have consistently ruled that in reviewing a grant of summary judgment, the evidence must be

considered in a light most favorable to the losing party and the summary judgment will be affirmed only if there are no genuine disputes as to any material issue of fact or if accepting the facts as contended by the losing party, the moving party is entitled to judgment as a matter of law. See D & L Supply v. Saurini, 775 P.2d 420, 421 (Utah 1989). It is also well settled that in reviewing the granting of a summary judgment, the Appellate Court will accord the trial court's legal conclusions no deference, but will review them for correctness. Madsen v. Borthick, 769 P.2d 245 (Utah 1988). Furthermore, with respect to interpretation of the facts on review, this court must construe the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party. Rollins v. Peterson, 813 P.2d 1156 (Utah 1991) and Blue Cross Blue Shield v. State, 779 P.2d 634 (Utah 1989). This court has also repeatedly held that summary judgment is appropriate only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Rollins v. Peterson, 813 P.2d 1156 (Utah 1991).

2. The trial court erred in its legal conclusion that the contract between the parties was validly terminated. Because summary judgment was granted as a matter of law, rather than fact, this court is free to reappraise the trial court's legal conclusions and is required to give them no deference but may

review them for correctness. See Sandy City v. Salt Lake County, 827 P.2d 212.

3. The amount of Appellants' damages herein is an issue of fact not yet determined. Appellants contend that their damages are ongoing and will continue to accrue until the contract between the parties is effectively terminated. The standard of review of this issue is the same set forth in issues 1 and 2 above.

4. The court improperly held that the contract between the parties was not an exclusive contract, and wrongfully dismissed the Plaintiffs' original complaint. The testimony of all parties was consistent and their course of dealing clearly indicated an exclusive arrangement. The standard of review of this issue is identical to the previous issues.

STATEMENT OF THE CASE

Plaintiffs' original complaint against the Defendant alleged that Plaintiffs were entitled to commissions for sales made in Utah, Idaho, and Montana based upon the terms of an exclusive Sales Representation contract. The trial court dismissed Plaintiffs' original complaint on motion to dismiss filed by the Defendant and concluded, based solely upon the wording of the contract, that it was not an exclusive contract because no where did the word "exclusive" appear. Plaintiffs then obtained leave to file an

amended complaint alleging that the Plaintiffs were entitled to commissions on sales made in their territory (Utah, Idaho, and Montana) based upon the express provisions of the agreement. Trial on the amended complaint was set for December 1991. A week before trial, the court granted the Defendant's Motion for Summary Judgment on all issues and dismissed Plaintiff's Amended Complaint, no cause of action. From this judgment, the Plaintiffs have appealed.

FACTS

Appellee, Harris Corporation, is a manufacturer of electronic parts. Appellants are independent sales organizations located in Denver, Colorado and Salt Lake City, Utah. On or about August 1, 1986, the parties renewed and modified an earlier Sales Representative Agreement in which the Appellee employed Appellants as their sales representatives for the states of Utah, Idaho, Wyoming, Montana, and Colorado (R.pp. 5-17) (Appendix A). The Sales Representative Agreement was drafted solely by the Appellee and is in effect an adhesion contract (Koester deposition R.p. 345 and admission of counsel, R.p. 345, lines 21-24).

Appellants contend that the Sales Representative Agreement provided for payment of commission to Appellants for all sales made in the designated area, whether Appellants participated in the sale

or not (R.pp. 6-9). Appellants also contend that the testimony of the parties would clearly indicate that it was intended to be and treated as an exclusive sales contract.

On or about October 1, 1988, Appellants entered into a Subrepresentation Agreement with Peggy Harris of Harris Marketing, Inc., wherein Harris Marketing, Inc. agreed to perform the sales duties for Appellee Harris Corporation's products in the states of Utah, Idaho, and Montana (R.pp. 236-49) (Appendix B). On or about December 21, 1988, the Appellee gave formal written notice of partial termination for convenience of the territories of Colorado and Wyoming (R.p. 339) (Appendix C). On or about March 1, 1989, Appellee Harris Corporation, entered into a new Sales Representative Agreement directly with Harris Marketing, Inc., agreeing to employ Harris Marketing, Inc. for sales in Utah, Idaho, and Montana (R.pp. 236-49) (Appendix D). Apparently, at the time of entering this agreement with Harris Marketing, Harris Corporation was under the mistaken impression that it had cancelled the entire agreement with Appellants (R.pp. 347-348). Subsequently this error came to Appellee's attention, and on August 22, 1989, their legal counsel issued a letter entitled "Notice of Termination of Sales Representative Agreement". This letter purported to be a 90 day written notice of termination effective retroactively to March 21, 1989 (R.p. 19) (Appendix E).

After learning that Harris Marketing, Inc. entered into a contract directly with Harris Corporation, Appellants negotiated a settlement with Harris Marketing because entering that agreement was a breach of the Sub-representation Agreement between the Appellants and Harris Marketing (R.pp. 394-98, 336) (Appendix F). The Appellants valued the asset wrongfully taken by Harris Marketing at approximately \$70,000.00, but because of Appellants' determination that Harris Marketing was not able to respond in substantial damages, the claim was settled for \$15,000.00. Appellants contend that the settlement with Harris Marketing was for the loss of the Harris Corporation contract line and did not include the specific commissions paid to Harris Marketing for sales made after March 1989. At the time of settlement, neither party was aware of the amount of commissions paid.

Harris Marketing subsequently sold its Utah business to third parties and received approximately \$80,000.00 for the Harris Corporation Sales Representative contract (R.pp. 367-68). Subsequent to Harris Marketing entering into a new contract with Harris Corporation, Harris paid the commissions to Harris Marketing through November 22, 1989, in the sum of \$70,817.00 (R.pp. 277-78). In addition, Appellants claim a loss of the sales representative contract with Harris Corporation, which was an asset valued at between \$70,000.00 and \$80,000.00 (R.pp. 336-37, 277-78).

SUMMARY OF ARGUMENTS

POINT I

Without hearing any evidence on the matter, the trial court ruled that the contract between the parties was not an exclusive contract. Appellants contend that the course of dealing and testimony of all parties would clearly indicate that the contract was an exclusive contract. It was error for the trial court to rule on motion to dismiss from the face of the agreement only, without allowing evidence as to intent and course of dealing between the parties.

POINT II

The contract between the parties had express provisions concerning the manner of termination which included a prior written 90 day notice of intent to terminate. This 90 day period was essential for Appellants in arranging their sales efforts. The trial court erroneously held that a letter from Appellee's counsel, retroactively terminating the contract, satisfied the contract requirement and was an effective termination. The contract was written by Appellee, was, in essence, an adhesion contract, and Appellants were entitled to strict compliance with its provisions

on termination.

POINT III

Appellants contend that the contract between the parties is still in full force and effect because it has never been terminated in accordance with the specific termination clause. Thus, Appellants' damages are ongoing. They are entitled prospectively to commissions for all sales made in Utah, Idaho, and Montana until the date of effective termination of the contract. The court also erred in offsetting against the incurred damages, the amount which Appellants would have had to pay to their sub-representative. That sub-representative breached its contract with Appellants by surreptitiously entering into a private and separate agreement with Appellee. That act excused Appellants from performance of their contract with the sub-representative.

POINT IV

Appellants contend that there has never been an effective termination of the Representation Agreement, which is the subject of this action. The Appellee, without terminating the Appellants' contract, entered into a contract with third parties who performed the same services covered by the contract between the parties. This resulted from a negligent error on the part of the Appellee,

and such negligence does not excuse their performance of their contract with Appellants.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DISMISSING PLAINTIFFS' ORIGINAL COMPLAINT AND FINDING THAT THE AGREEMENT WAS NOT AN EXCLUSIVE CONTRACT

The trial court improperly ruled as a matter of law in dismissing Plaintiffs' original complaint, that the contract between the parties was not an exclusive contract because it did not contain the specific term "exclusive" (R.pp. 108-9). By so holding, the court excluded all evidence including the course of dealings between the parties and other factors which would clearly have established that the contract was intended to be exclusive. The termination letter of the Appellees (R.p. 19, paragraph 3), together with the testimony of the parties would clearly establish that the Sales Agreement was intended to be exclusive.

Other courts have specifically held that contracts may be interpreted to be exclusive through course of dealing and other extrinsic evidence, even though they do not contain the word "exclusive". See White Company v. W.P. Farley and Company, 219 Kentucky 66, 292 SW 472. The contract between the parties was

clearly an adhesion contract drafted solely by the Appellees (R.p. 345) and Appellants are entitled to a broad interpretation of the contract if there is any ambiguity in the specific provisions. See Seal v. Tayco, Inc., 400 P.2d 503, 16 Utah 2d 321 (1965).

Exclusive agency has been similarly implied in the absence of express use of the terminology by other courts. See Stroud Western Realty Agency v. Gregoire, 101 CalAp2.d 512, 225 P.2d 585, Sutton v. Baker, 91 Minn. 12, 97 N.W. 420. See also 52 ALR 541. The Utah Supreme Court has also clearly held that where a contract is ambiguous because of uncertainty or incompleteness concerning the parties rights and duties under the contract, extrinsic evidence is permissible to ascertain the parties intent. Power Systems and Controls, Inc. v. Keith's Electric Construction Co., 765 P.2d, 5 (Utah App. 1988).

In a case presenting identical issues, a New York court concluded where a contract was unclear and ambiguous as to whether assigned territory was exclusive or not, the court properly permitted oral testimony by representatives of the parties to the contract to the effect that the territory was to be exclusive. See Mr. Filters, Inc. v. Weber Environmental Systems, 353 N.Y.S. 2d 835, 44 A.D. 2d 639 (New York 1974).

POINT II

THE TRIAL COURT ERRED IN CONCLUDING THAT THE CONTRACT BETWEEN
THE PARTIES WAS VALIDLY TERMINATED AND FURTHER
MISINTERPRETED THE SETTLEMENT AGREEMENT BETWEEN APPELLANTS
AND HARRIS MARKETING

The trial court, in granting summary judgment, concluded that the contract between the parties was terminated by a letter dated August 22, 1989 (R.p. 400-1) (Appendix E). Based upon that conclusion, the court held that the Appellee would only owe commissions to Appellants for the period ending 90 days after August 22, 1989. The court states that "reason dictates" that the August 22nd letter is a notice of termination (R.p. 400). Appellants could agree with the trial court's position if there were not an express contract provision designating the only acceptable method of termination. That method requires 90 days prior written notice (R.p. 9) (Appendix A, paragraph 6). The trial court then concluded that, based upon the Sub-representation Agreement between the Appellants and Harris Marketing (Appendix B), Appellants have received, through the settlement with Harris Marketing in the amount of \$15,000.00, all of the funds they were entitled to receive (i.e., 20% of \$70,800 is roughly \$15,000.00).

It is a mere coincidence that the 20% of the total commissions paid to Harris Marketing for the period was near the same amount of the settlement. The settlement with Harris Marketing was not

based upon the amount of lost commissions, but upon the value of the asset which she converted from Appellants. The Appellants' losses include the full commissions to which they were entitled under the contract plus \$70,000.00 to \$80,000.00 for the lost asset value of Harris Corporation Sales Representation Agreement. Appellants have certainly not been made whole by Harris Marketing's payment of \$15,000.00. Harris Marketing subsequently sold the disputed contract which it had converted from Appellants for \$80,000.00 (R.p. 367-8) and in addition received an additional \$70,800.00 in commission (R.pp. 277-8) before the sale. The trial court, in reaching its conclusion, made improper fact assumptions about the basis of the settlement agreement between the Appellants and Harris Marketing. No evidence of the intent of this agreement was entered in court and the trial court merely assumed the facts in favor of Appellees. This was clearly error. In matters involving summary judgment, the trial court must construe the facts and all reasonable inferences drawn therefrom in the light most favorable to the non-moving party (Appellants in this case) Rollins v. Peterson, 813 P.2d 1156 (Utah 1991) and Blue Cross Blue Shield v. State, 779 P.2d 634 (1989).

Further, the trial court erroneously interpreted the word "compensation" set forth in the settlement agreement (R.pp. 394-8) (Appendix F) as "commissions". The settlement between Appellants

and Harris Marketing was not based upon commissions at all, as the parties were not even aware of how much commission the parties were entitled to. The amount of commissions paid by Appellee to Harris Marketing was not known until the Affidavit of Lisa Dutchik (R.pp. 277-78) was filed in November of 1991, just before trial. This was two years after the settlement agreement was made between Appellants and Harris Marketing. The Harris Marketing settlement was based upon a totally separate contract and was based solely upon the value of the asset taken and Appellants' perception of Harris Marketing's inability to respond to damages.

Appellants contend that whether the \$15,000.00 received from Harris Marketing was commissions or for loss of an asset is an issue of fact, yet the trial court held as a matter of law, that Appellants received their full compensation due under the contract without determining the factual basis for the settlement. In so doing, the trial court has concluded that the settlement and release between the Plaintiff and Harris Marketing also releases Harris Corporation, even though Harris Corporation was not a party to the negotiations, nor are they mentioned in the release (R.pp. 394-8). Plaintiffs' testimony will substantiate that Plaintiffs never intended to release Harris Corporation in the settlement with Harris Marketing, and fully intended to bring this claim for lost commissions, after the settlement with Harris Marketing for

converting their asset. The trial court clearly erred in assuming from the vague language in the settlement agreement, which was drafted by Harris Marketing's attorney, that the word "compensation" means "commission". Based upon that erroneous assumption, the court concluded that the Appellants are seeking the same damages from Harris Corporation that it received from Harris Marketing.

There are certainly not sufficient facts in the record for the court to conclude that Appellants were made whole by the settlement with Harris Marketing and that the parties intended to release Harris Corporation in that settlement agreement. Appellants, therefore, are not been precluded from claiming just damages from Harris Corporation which are based upon a totally separate agreement.

Furthermore, in spite of the express language of the settlement agreement (Appendix F) that its terms would be held confidential, it is obvious that Harris Marketing disclosed the terms of that settlement agreement to Harris Corporation because Harris Corporation contributed one-half of the settlement amount (R.pp. 325-6). This fact was not known by the Appellants until the Affidavit of George Gidinski was filed just before trial. If Appellees had intended to be released by the release and settlement agreement with Harris Marketing, they had every opportunity to

request that they be included in the release. Their failure to do so clearly indicates that they did not negotiate a release through that settlement agreement (R.p. 394-98).

In reviewing the court's granting of the summary judgment in this case, this court must consider all of the evidence and all the inferences drawn therefrom in a light most favorable to the losing party. See D & L Supply v. Saurini, 775 P.2d 420 (1989). There are clearly many factual issues surrounding the settlement agreement between the Appellants and Harris Marketing. Appellants are entitled to have those facts resolved in their favor. The trial court clearly erred in offsetting that settlement amount against Appellants' damages claimed herein.

POINT III

THE AMOUNT OF APPELLANTS' DAMAGES HEREIN IS AN ISSUE OF FACT NOT YET DETERMINED

The trial court erroneously held that the Appellants have suffered no damages by Appellee's payment of \$70,817.00 to Harris Marketing (R.pp. 400-401). The court uses the Sub-representation Agreement which Appellants entered into with Harris Marketing to limit the amount of the claim which Appellants are entitled to make against Appellee. Appellants contend that the manner in which their commissions are ultimately distributed is immaterial. The

contract between the parties required Appellees to pay to the Appellants the total amount of commissions for sales in Utah, Idaho, and Montana. If Appellants elected to share those commissions on a Sub-representation Agreement or to pay their own employees, they were entitled to do so. The Sub-representation Agreement between Appellants and Harris Marketing was a temporary agreement (R.p. 260) and was terminable upon 60 days notice (R.pp. 36-48) (Appendix B). That agreement was breached by Harris Marketing when Harris Marketing surreptitiously negotiated a new contract with Appellee and converted the asset. Appellants contend that Harris Marketing's claim to any commission under the Sub-representation Agreement was forfeited by that breach. It is clear, based upon that breach, Appellants were entitled to rescind the Sub-representation contract with Harris Marketing and by such a rescission would have been relieved from any further obligation to pay commissions under the contract. See Polyglico Corporation v. Holcomb, 591 P.2d 449 (Utah 1979). Appellants were thus entitled to retain all of the commissions for sales made in Utah, Idaho, and Montana, after March 1989.

The trial court apparently, in reaching its decision, determined that the "equities" were in favor of the Appellees because the court assumed that the commissions were all earned through the efforts of Harris Marketing. This assumption makes

Appellants out as the "heavy" attempting to get "something for nothing". Such is not the case. An analysis of the commissions would indicate that the majority of the commissions paid to Harris Marketing were from efforts of Appellants prior to Harris Marketing's involvement in the Sub-representation Agreement and were a direct result of prior efforts of the Appellants.

POINT IV

THE SALES REPRESENTATIVE AGREEMENT BETWEEN THE PARTIES
HAS NEVER BEEN TERMINATED AND IS STILL IN FULL FORCE
AND EFFECT WITH RESPECT TO UTAH, IDAHO, AND MONTANA

The right to receive commission for the specified territory during the term of the contract is a major compelling consideration for Appellants entering into this contract. This was clearly understood by the Appellees (R.p. 344). Sales Representation contracts are treated as major assets of sales representation firms and are regularly bought and sold as such. For example, the Harris contract dated March 1989, was sold by Harris Marketing to third parties for approximately \$80,000.00 (R.pp. 367-68).

The most substantial issue of fact presented by this case is whether the agreement between the parties was ever effectively terminated. In construing the express contract requirements for termination, the contract must be construed strictly against the Appellees since their attorney drafted it (R.p 345). See Wagstaff

v. Remco, Inc., 540 P.2d 931 (Utah 1975), Wyngets, Inc. v. Bitters, 500 P.2d 1007, 28 Utah 2d 231 (1972), and Guinand v. Walton, 450 P.2d 467, 22 Utah 2d 196, 480 P.2d 137, 25 Utah 2d 253 (1969).

In addition, courts have consistently held that to be effective, a notice of termination of a contract must be clear and unambiguous, conveying the unquestionable purpose to terminate. Stovall v. Publishers Paper Company, 584 P.2d 1375 (Or. 1978) and Debry Hilton Travel Services, Inc. v. Capital Intern Airways, Inc., 583 P.2d 1181 (Utah 1978). The contract language setting forth the manner of termination is unambiguous. It simply states: "We may terminate this agreement for convenience by giving not less than 90 days prior written notice." (R.p. 9) (Appendix A, paragraph 6). This process was clearly understood by the parties as demonstrated by their course of dealing in terminating the Wyoming and Colorado portions of this same contract by termination letter dated December 22, 1988 (R.p. 339) (Appendix C). The 90 day prior notice was important to Plaintiffs because it allowed the sales organization to plan their efforts. Obviously they would not work on sales that wouldn't close until after termination and would have some time to direct their sales efforts into other sales activities.

The Appellee has the burden of establishing a termination of the contract since it raised it as a defense, but has failed to establish the facts on summary judgment that such termination took

place. The Appellee claimed that the contract was terminated by a series of documents and transactions (R.pp. 340-41, 348). These were individually analyzed by Appellants in their Memorandum in Opposition to Summary Judgment (R.pp. 322-27). None of these documents specifically complies with the termination provisions of the contract.

There were two offered explanations as to why Appellees entered into a new contract with Harris Marketing without first terminating their contract with Appellants. First, Appellees allegedly believed they were still dealing with the same entity (i.e., Appellants) who had just requested a name change (R.p. 342). They claim they were "duped" by Peggy Harris of Harris Marketing, into changing the name on the contract. They admit they did not verify with Appellants, her authority to direct that name change (R.pp. 346-47).

A more logical explanation of this error was also given by Phil Koester. He admitted that he did not carefully read the December 21, 1988 termination letter (Appendix C) which terminated only the Colorado and Wyoming territories. He erroneously assumed that Appellants' entire contract had been terminated effective March 1, 1989 and that he was therefore free to deal with whomever he wished (R.pp. 347-48). Unfortunately for the Appellee, such was not the case and the signing of the contract with Harris Marketing

in March 1989 clearly created duplicate obligations to pay commissions to both Harris Marketing and Appellants for all sales made in Utah, Idaho, and Montana.

After learning of this error, Appellee's counsel wrote a letter dated August 22, 1989, (R.p. 19) (Appendix E) which attempts to retroactively terminate the contract on March 1, 1989. This letter does not in any way fulfill the contract requirement of a 90 day prior written notice of termination. Appellee's counsel, in that letter, concludes that the December 21, 1988 letter, together with the signing of a new agreement with Harris, mysteriously resulted in a termination of Appellants' rights under the Sales Representative contract. The only rationale stated in that letter is that there was "a misunderstanding that the relationship between CSI and Harris Marketing is not as originally understood by Harris Semiconductors".

A unilateral misunderstanding of the facts on the part of Appellee, is not a legal basis for termination of the contract because such misunderstanding was based upon Appellee's own negligence in failing to determine facts which clearly existed before the contract was entered. See Ellison v. Johnson, 423 P.2d 657, 18 Ut. 2d 384 (1967). There is indeed no substantive evidence that Appellee misunderstood the relationship between CSI and Harris Marketing. If such misunderstanding existed, it would be an issue

of fact which was not resolved and which should have barred summary judgment.

Appellee's counsel's letter (R.p. 19) (Appendix E) is clearly not a notice of termination of the Sales Agreement, but is rather a statement of a legal opinion that the contract had already been terminated. It clearly does not comply with the required procedure set forth in the contract which requires not less than 90 days prior written notice.

In summary, the court erroneously construed Appellee's counsel's letter as a 90 day notice of termination. Such was never the intent of the letter. Rather, the letter is an unfounded, illogical, and unreasonable self-serving legal opinion. It is no wonder that Appellant Jim Martin testified that he interpreted the August 22nd letter as an expression of what Mr. Rothman wished the Appellee had done (R.pp. 357-59).

It is clearly an issue of law as to whether the statement of legal opinion by Appellee's counsel satisfied the contract provisions for termination. The standard of review of this issue is identical to the previous issues. The trial court's legal conclusion that the contract was terminated is entitled to no deference by this court in review. (Madsen v. Borthick supra)

CONCLUSION

For the reasons set forth above, Appellants contend that the trial court erred in granting summary judgment because there were material issues of fact remaining in this case. Appellants further contend that the legal conclusions of the trial court which are based upon assumed facts are incorrect. Appellants respectfully request that this court set aside the summary judgment of the trial court and remand the case for trial on the merits. Appellants further seek a ruling that the contract between the parties has not been terminated as claimed by Appellee.

Respectfully Submitted,



RAYMOND A. HINTZE
Attorney for Appellants

MAILING CERTIFICATE

COMES NOW, Raymond A. Hintze, and certifies that he mailed four true and correct copies of the foregoing Brief of Appellants to Michael E. Blue, Attorney for Appellee at RAY, QUINNEY & NEBEKER, 79 South Main Street, P.O. Box 45385, Salt Lake City, Utah 84145-0385, postage prepaid this 6 day of July, 1992:



RAYMOND A. HINTZE
Attorney for Appellants

Appendix A

SALES REPRESENTATIVE AGREEMENT

THIS AGREEMENT is made this 1st day of August, 1986, by and between HARRIS CORPORATION, acting by and through its Semiconductor Sector, P.O. Box 883, Melbourne, Florida 32901 and Component Sales, Inc., 7108 S. Alton Way, Building "E", Englewood, CO 80112.

The parties agree as follows:

As used in this Agreement, the words "we", "us", and "our" refer to Harris, and the words "you" and "your" refer to the Representative.

1. APPOINTMENT. You accept appointment as a sales representative of our Products in the Territory, under the terms and conditions of this Agreement. The current Products are referenced in Attachment 1, and the Territory is indicated in Attachment 2A.
2. ACTIVITIES. In general, you will exercise your best efforts to promote the sales of our Products through contacting, soliciting purchases by, and servicing of Customers (actual and prospective) throughout the Territory. In particular, you will
 - o Maintain an office and sales organization in the Territory equipped and competent to perform all activities in connection with promoting the sale of our Products;
 - o Assist us in establishing mutually acceptable realistic annual sales objective for the Territory, against which your performance will be measured;
 - o Demonstrate our Products and, when requested, assist us at selected trade shows in the Territory;
 - o Identify any new Product requirements and new Customers, and submit to us a completed Marketing Inquiry Form (Attachment 3) pertaining to Customer inquiries for new Products;
 - o Assist us in training and support of our authorized Distributors, and assist the Distributors in promoting the sale of our Products;
 - o Periodically submit to us your forecasts and reports of your activities in the Territory in connection with performance under the agreement, in a form designated by us;

- o Not represent an actual or prospective competing product line of any other source, as determined in our reasonable judgment, without our written consent;
- o Assist us in handling Customer claims and inquiries;
- o Assist us in credit check of and collections from Customers, when we request same;
- o Maintain and furnish to us an up-to-date mailing list of customers for mailing of product literature and the like;
- o Treat the substantive provisions of this Agreement and other business information disclosed to you by us as confidential information; and
- o Perform other reasonable activities within the general scope of this Agreement, when requested by us.

3. QUOTATIONS AND ORDERS. You will make quotations for Products strictly on prices and terms authorized by us. Our standard terms and conditions of sale in effect at the time of this Agreement are contained in Attachment 4. You will submit or request the Customer to submit all Orders for Products to us at our home office in Melbourne, Florida.

An Order will be considered "booked" only when and to the extent we issue a written Order Acknowledgment to the Customer from our Melbourne office. We reserve the right to reject Orders, without incurring any liability to you.

You have no authority to accept Orders or to modify them in any way, or to make any commitments purporting to bind us.

4. COMMISSIONS. Your remuneration under this Agreement is limited to Commissions. In general, you will earn a Commission on (i) our Product sales into the Territory to Customers (other than Distributors) against Orders booked during the term of this Agreement, and (ii) Product resales during the term of this Agreement by our authorized Distributor locations in the Territory. In addition, you will earn a commission equal to twenty (20%) of your then applicable rate with respect to sales in the Territory during the Term on Orders booked prior to the Term of this Agreement. Except for research and development orders for custom and semicustom products, the Commission will be earned at the time of the sale or resale, that is, when the delivery is billed by us or the Distributor as the case may be.

The Commission rate will be a percentage of the net amount billed F.O.B. origin, "net" meaning exclusive of federal, state and local taxes, assessments and tariffs of any kind whatsoever, transportation charges, insurance, and any incidental fees or charges, and reflecting applicable discounts, credits, claims and price allowances.

The Commission rate is a variable percentage as set forth in Attachment 5 based on a comparison of sales against an annual quota set by us and acknowledged by you. Each sales period your actual cumulative sales will be compared with the corresponding cumulative quota to the nearest whole percent and your commission for the cumulative period will be adjusted and paid accordingly.

Sales involving more than one territory will ordinarily result in split Commissions among the respective sales representatives on the following basis: 50% to design-in, and 50% to purchasing territories. Distributor resales, however, will be paid 100% ship-to-location by Zip code, except as otherwise noted in this Agreement or exhibit thereto. In no event will the sum of the split Commissions exceed the applicable Commission for a corresponding sale involving only one territory.

We recognize that controversies may from time to time arise between you and other representatives with regard to Commissions due for sales to Distributors or Customers, with such sales being made in one Representative's Territory to Customers doing business or accepting delivery in another Representative's Territory. You and we specifically understand and agree that we have the right to, and may, establish reasonable rules and regulations of general application subject to change from time to time governing the sales of Products, and you agree to abide by such rules and regulations. Any disputes with respect to allocations of Commission shall be submitted to us for reasonable adjustment and determination and such determination shall be binding and final upon you and all right to further adjudication on such matters is hereby waived. In addition, we reserve the right to allocate the entire Commission to the purchasing Territory for an order of \$1,000 or less.

We may at any time designate a Customer as a "House Account", by giving you ninety (90) days written notice. You will continue to earn full Commissions on our sales to the House Account and on Distributor resales to that account during the notice period and on our sales to the House Account (but not on Distributor resales to that Account) after expiration of the notice period based on the scheduled orders (scheduled delivery not exceeding 12 months) on backlog at the expiration of the notice period.

No Commission will be earned at any time on (i) Products we export from the U.S.; (ii) license or know-how agreements; (iii) non-recurring engineering charges on custom or special Products unless otherwise agreed in writing; (iv) qualification charges on Hi-Rel or other Products; (v) design and/or development contracts except as otherwise agreed; (vi) Products shipped at no charge or for which the Customer has been given credit, whether for replacements under warranty, lost shipments or other Customer claims.

We reserve the right at any time to reduce your Commission rate on Distributor resales involving a volume purchase agreement between

us and our Customer where the purchase agreement prices to the Customer are discounted to the Distributor.

We will be entitled to set off against your account any Commission you have earned on the sale or resale of a Product subsequently returned for credit or reimbursement, or for which the Customer fails to pay after normal collection procedures. In any case, we reserve the right to withhold payment of your Commission until the Customer pays us.

We reserve the right at any time with ninety (90) days written notice to you to change the Commission rate on specific Products or involving specific Customers, or both, in what we deem to be unusual circumstances. If we make any such change it will not apply to sales against Orders booked prior to the expiration date of the notice period, but only to Orders booked thereafter.

We may at any time increase or decrease the geographic Territory by giving you ninety (90) days written notice. With respect to sales into the increased portion of the Territory, you will earn a commission equal to twenty (20%) of your then applicable rate on sales (but not distributor resales) after the notice period based on Orders booked prior to expiration of the notice period. With respect to sales into the decreased portion of the Territory, you will earn a full commission on sales and Distributor resales on sales made during the notice period and eighty (80%) of your then applicable rate on sales (but not on Distributor resales) after the notice period of Orders booked prior to expiration of the notice period.

For Custom and Semicustom device contracts pertaining to Research and Development (including studies) or portions of such negotiated contracts awarded to us, you will earn a commission of 10% on the amount secured and entered into the order entry system. "Development" is defined as any effort involving design, layout, mask fabrication, wafer fabrication and delivery of functional samples and/or prototypes. Non-recurring engineering charges such as preliminary tooling, test program generation, qualification charges etc., if included in the basic contract, are considered Development and are commissionable. Such Development orders are commissionable and payable at the time of order entry. Payments are to be made in accordance with Paragraph 5. Specifically excluded as Development are production tooling, "full-up" qualification units, pre-production units, first article units and production units. Special charges such as technology transfer and test equipment are not commissionable. The maximum commission payable on any Development program shall be \$50,000. Add-ons or additional Development orders arising out of orders on which a commission has already been paid will not be commissionable. With respect to cost reimbursable type contracts, the Commission Rate will be a percentage of the net amount of the original negotiated

estimated cost exclusive of Facilities Capital Cost of Money (FCCOM) and Negotiated Fee plus any additional negotiated cost related to changes in scope. Additional negotiated cost related to changes in scope not including cost overruns is commissionable.

5. COMMISSION PAYMENTS. We will pay you your earned Commissions, less applicable setoffs if any, within six (6) weeks after the end of the period (our fiscal "month") in which they are earned. However, payment of Commissions earned on Distributor resales is contingent on our receipt of the Distributor's resale report for the period in question.
6. TERM OF AGREEMENT. This Agreement will commence on the date first written above and will continue in effect until terminated by either party.

Either you or we may terminate this Agreement for convenience at any time by written notice to the other.

We may terminate this Agreement for convenience by giving not less than ninety (90) days prior written notice. On termination for convenience you will continue to earn full commissions on our sales and Distributor resales made prior to expiration of the notice period and eighty (80%) of your then applicable commission rate on sales (but not Distributor resales) made after the notice period based on Orders booked prior to expiration of the notice period and scheduled for shipment within 12 months.

You may terminate this Agreement for convenience by giving not less than ninety (90) days prior written notice. On termination for your convenience you will continue to earn full Commissions on our sales (but not on Distributor resales) made prior to expiration of the notice period.

We may also terminate this Agreement for your default if (i) you fail to perform a material obligation required by this Agreement, including but not limited to obligations set forth in paragraph 2 or (ii) a trustee in bankruptcy or a receiver is appointed for you or you make an assignment for the benefit of creditors. With respect to (i) above, we shall give you written notice of such failure, and you shall have ninety (90) days from the date of such notice to correct such failure to our satisfaction. In the event that you do not correct such failure by the end of such period or that you acknowledge to us to be unable or unwilling to correct such failure at any time during such period, then this Agreement will terminate on the ninetieth day after said notice for your default. With respect to (ii) above, we may terminate this Agreement for your default immediately by giving you written notice of termination. You will continue to earn Commissions on our sales (but not on the Distributor resales made prior to expiration of the notice period) termination under either (i) or (ii) above.

Commission payments will be made in the manner provided in Article 5, above. The foregoing provisions of this Article 6 constitutes our sole liability and your exclusive remedy for termination of this Agreement.

You agree to dispose of any materials we have furnished to you in accordance with our instructions, and to cease any and all use of our names and trademarks in conjunction with any of your activities, promptly on termination of this Agreement.

During the term of this Agreement and for a period of one (1) year after termination, we and you agree not to disclose to any third party any confidential information of the other party learned as a consequence of performance under this Agreement.

7. MISCELLANEOUS PROVISIONS.

- A. Relationship. You are an independent contractor whose sole authority under this Agreement is to solicit Orders in lawful and ethical manner for acceptance by us. You agree to hold us harmless from any claims or damages arising from your having exceeded your authority hereunder.
- B. Compliance with Laws. You agree you will conduct your operations and activities in the performance of this Agreement in compliance with all applicable laws and regulations.
- C. Assignment. You understand that you have no right to assign this Agreement to any other party without our prior written consent. If you make an assignment in whole or in part, including but not limited to an assignment of any sums payable by us hereunder without our consent, we may elect to disregard such assignment.
- D. Notices. Any notice required by this Agreement must be in writing addressed to the other party at its address indicated herein or to such change of address as has been given by notice, and sent by certified or registered mail, postage prepaid. The notice will be effective on date of mailing.
- E. Waivers. Our failure to promptly enforce any right or remedy to which we may be entitled herein will not constitute a waiver of that right or remedy.
- F. Setoffs. We reserve the right to set off any amount you owe us against any sum we owe you.
- G. Entire Agreement. This Agreement, Attachments and Addenda hereto constitute the entire agreement between you and us as to the subject matter herein, integrates all discussions and understandings leading up to this Agreement, and supersedes

all prior agreements between you and us pertaining to that subject matter. No modification of this Agreement will be deemed effective unless made in writing signed by you and one of our authorized offices.

H. Governing Law. This Agreement is to be construed and enforced according to the law of the State of Florida, U.S.A.

HARRIS CORPORATION
SEMICONDUCTOR SECTOR

REPRESENTATIVE (Name of Company)

By:

W. E. Wagner

By:

JAMES L. MARTIN

Printed Name: W. E. Wagner

Printed Name: JAMES L. MARTIN

Title: Vice President - Sales
Semiconductor Products
Division

Title: PRESIDENT

DOMESTIC SALES REPRESENTATIVE AGREEMENT

LIST OF ATTACHMENTS

- ATTACHMENT 1: Product List (noting any exclusions)
- ATTACHMENT 2A: Territory (with list of any excluded accounts as to Semiconductor Products Division)
- ATTACHMENT 2B: CICD House Programs and House Accounts
- ATTACHMENT 3: Marketing Inquiry Form
- ATTACHMENT 4: Terms and Conditions of Sale (in effect on date of this Agreement)
- ATTACHMENT 5: Representative Commission Payment Schedule

ATTACHMENT 1

PRODUCT LIST

- All products manufactured by HARRIS SEMICONDUCTOR PRODUCTS DIVISION. Reference the current HARRIS Cost and Resale schedule.
- HARRIS SEMICONDUCTOR CUSTOM INTEGRATED CIRCUIT DIVISION'S Communications, Strategic, Tactical and Standard Data Sheet Products. Reference Data Sheet Products price list.
- Gallium Arsenide Microwave Products manufactured by HARRIS MICROWAVE SEMICONDUCTOR. Excluded from this listing is all Microwave amplifiers.

ATTACHMENT 2A
REP TERRITORIES AS OF NEW AGREEMENT
AUGUST 1, 1986

<u>REP NAME</u>	<u>CODE</u>	<u>TERRITORY DESCRIPTION</u> <u>BY U.S. ZIP CODE</u>	<u>EXCEPTIONS</u>
Component Sales, Inc.	8AB2	590XX - 599XX 800XX - 831XX 840XX - 847XX	837XX <i>[Signature]</i> 5/16/86

COMPONENT SALES, INC

REV. 0
6/30/86CICD AND GALLIUM ARSENIDE MICROWAVEHOUSE PROGRAM AND HOUSE ACCOUNT EXCLUSIONS

(NOT APPLICABLE TO CICD DATA SHEET PRODUCTS)

- 1) Any programs within the territory which are contracted to said Customers by Maryland Procurement Agency (National Security Agency). NSA designed CYPHER family circuits sold to non-NSA military programs and to Customers participating in the Commercial COMSEC Endorsement Program (CCEP) are not exclusions unless listed in this document.
- 2) Any programs within the territory which are classified by Harris Custom Integrated Circuits Division as a strategic military program to include as a minimum any portion and/or in whole the following programs: Trident, MX/Peacekeeper, MK-21, MK-21A, Pen Aids, Re-entry Vehicle Programs, and derivatives thereof. MX/Peacekeeper Re-entry Programs and derivatives. HCICD is at its sole discretion, may from time to time add further exclusions when warranted.
- 3) U.S. Government Agencies.

ATTACHMENT 5

REPRESENTATIVE COMMISSION PAYMENT SCHEDULE

<u>Cummulative % of Plan</u>	<u>Commission Rate</u>
75%	4.000%
76	4.020
77	4.040
78	4.060
79	4.080
80	4.100
81	4.120
82	4.140
83	4.160
84	4.180
85	4.200
86	4.220
87	4.240
88	4.260
89	4.280
90	4.300
91	4.320
92	4.340
93	4.360
94	4.380
95	4.400
96	4.420
97	4.440
98	4.460
99	4.480
100	4.500
101	4.525
102	4.550
103	4.575
104	4.600
105	4.625
106	4.650
107	4.675
108	4.700
109	4.725
110	4.750
111	4.775
112	4.800
113	4.825
114	4.850
115	4.875
116	4.900
117	4.925
118	4.950
119	4.975
120% - over	5.000



HARRIS
SEMICONDUCTOR
A DIVISION OF TEXAS INSTRUMENTS

MARKETING INQUIRY

PAGE

OF

ATTACH ALL SUPPORTING DOCUMENTS AND FORWARD TO PRODUCT MARKETING.

CUSTOMER INFORMATION ALWAYS FILL IN LINES 1, 2, AND 3 COMPLETELY	1	INITIATED BY	DATE INIT.	TERR. CODE	DATE DUE
	2	CUSTOMER NAME & DIV.	LOCATION	CUST. CODE	
	3	CUSTOMER CONTACT	CUSTOMER SPEC. NO.	REV. NO.	REV. DATE

PRODUCT INQUIRY: A RFO NEW CUST SPECIAL B RFO REVISION OF ESTABLISHED SPECIAL C RFO ESTABLISHED SPECIAL NOT REVISED D RFO STANDARD PRODUCT E SAMPLES F _____	CHECK TYPE OF PRODUCT INQUIRY AT LEFT AND FILL IN LINES 4, 5, 6, 7 & BELOW. DO NOT FILL IN LINES 9, 10.				
	4	PRODUCT CLASSIFICATION	HI REL <input type="checkbox"/>	DEVICE TYPE	PROD. MKTG. ROUTING
	5	INQUIRY IDENTIFICATION	PROGRAM	AGENCY	DEL. QTY. AND DATE
	6	SEMICONDUCTOR QUANTITY POTENTIAL	PRICE REQ'D	DOLLAR POTENTIAL	% PROB. AWARD DATE EST.
	7	COMPETITIVE SITUATION <input type="checkbox"/> FIRM <input type="checkbox"/> ESTIMATED			
	8	SAMPLES:	QUANTITY REQUIRED:	ARE SAMPLES TO BE USED FOR LIFE AND/OR ENVIRONMENTAL TEST <input type="checkbox"/> YES <input type="checkbox"/> NO	TEST SAMPLES TO: GROUP A <input type="checkbox"/> OTHER <input type="checkbox"/>

DATA REQUEST: G RELIABILITY DATA H DEVICE DATA J FAILURE ANALYSIS K Q/C DOCUMENT REVIEW L APPLICATION ASSISTANCE	CHECK TYPE OF DATA REQUEST AT LEFT AND FILL IN LINES 9 AND 10. DO NOT FILL IN LINES 4, 5, 6, 7 AND 8.		
	9	HARRIS TYPE NUMBER	LINE SOURCE
	10	LEVEL OF REQUEST: <input type="checkbox"/> ENGINEERING JUDGEMENT <input type="checkbox"/> LIMITED ENGINEERING EFFORT <input type="checkbox"/> FORMAL PROPOSAL (ATTACH JUSTIFICATION)	

DETAILS OF REQUEST:

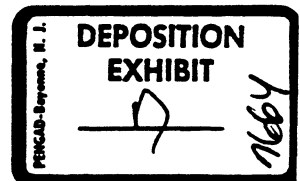
Appendix B

SUB-REPRESENTATION AGREEMENT

Component Sales, Inc., a Colorado corporation ("Representative"), agrees with Harris Marketing, Inc., a Utah corporation (the "Sub-Rep"), as follows effective the 1st day of ^{MARCH 1988} December 1986.

1. Purpose. Representative is a sales representative for certain Contract Principals pursuant to Sales Representation Agreements (the "Contracts") as described in Exhibit A attached hereto ^{or acquired after December 1, 1986 and shared with CSI or its affiliates.} The Contracts grant certain rights to the Representative in an area which includes but is not limited to the state of Utah. The Sub-Rep is engaged in sales work in the state of Utah, and the Representative maintains no offices or personnel in Utah for these Contracts. The purpose of this Agreement is to allow the Sub-Rep to provide direct sales representation within the state of Utah, subject to supervision and control by Representative, with respect to all of the Contracts and to provide for mutually satisfactory compensation to the parties in connection with their respective duties.

2. Duties of Sub-Rep. The Sub-Rep is hereby designated as the Sub-Sales Representative in the state of Utah to provide all services with respect to the Contracts of such state. The Sub-Rep agrees to provide all services required within Utah in connection with servicing the Contracts, including taking all action reasonably requested or directed by either the Contract Principals or by Representative. The Sub-Rep acknowledges that it is fully familiar with applicable laws and business practices as they relate to sales representation agreements, and the Sub-Rep agrees to



perform all of its duties hereunder in accordance with the highest legal and ethical standards and in accordance with good business practice.

The Sub-Rep shall maintain a sales office in Utah which is staffed with competent sales personnel. The staff will be sufficient to adequately cover the sales territory.

The Sub-Rep shall be responsible for reporting bookings, billing (invoices), and income on a monthly basis to Representative. The reports shall be by account, by salesperson, and by contract in a form mutually agreed on and shall be submitted by the 15th of each month for the preceding month.

The Sub-Rep shall attend sales meetings and planning sessions as required and shall submit all required reports to Representative including those required by Contract Factories.

The Sub-Rep is responsible for all their own expenses associated with the Sub-Rep's carrying out of the required duties. The duties shall not be limited to those outlined above.

3. Compensation. Compensation shall be computed and paid hereunder as follows:

(a) Representative shall pay to the Sub-Rep an amount equal to ⁸⁰60% (sixty percent) of the "gross commission revenue" of ~~From Jan. 1986 thru March 1987, Sub-Rep shall be allowed to draw the Contracts. 80% of gross commissions and any excess over actual 60% shall be deducted from commissions of 60% equally over the period from April 1987 to June 1987.~~ F.H. Jones

(b) Amounts due to the Sub-Rep hereunder shall be determined on a calendar-month basis and shall be paid within 20 days after the end of the relevant calendar month. Representative shall have responsibility for preparing accurate accounting records with respect to gross commission revenue.

(c) For purposes of this Agreement the term "gross commission revenue" shall mean all amounts received by Representative during the term of this Agreement as commissions or other earned income under the Contracts for sales validly made in Utah by the Sub-Rep subject to this Agreement, reduced by any deductions for bad checks, returns, or other amounts refunded by Representative or not actually received by the Representative. Any disputes relating to gross commission revenue shall be resolved in accordance with the Representative's customary accounting practices as determined by the Representative's regular accountants.

(d) In the event that any Contract Principal makes any payment to the Sub-Rep, the Sub-Rep shall immediately endorse and deliver such payment to the Representative.


4. Supervision by Representative. The Sub-Rep acknowledges that Representative has a valuable asset in the Contracts, has special knowledge of the Contract Principals, and has a relationship with the Contract Principals which must be preserved. All duties of the Sub-Rep will therefore be performed subject to the supervision and control of Representative and in a manner reasonably directed by Representative. The Sub-Rep will not make sales to any customer outside the state of Utah except with the prior written consent of Representative.

5. Confidentiality. The Sub-Rep acknowledges that all information relating to the Contracts, including without limitation, information concerning the identity of customers, pricing matters, product information, and all other information utilized in connection with performing services pursuant to the Contracts is confidential and constitutes a valuable trade secret

of Representative. Except for the prior consent of Representative, the Sub-Rep will not disclose any such information to any third party and will not utilize such information in any manner competitive with or adverse to Representative or the Contract Principals.

6. Noncompetition. During the term of this Agreement and for a period of two years after the termination of this Agreement, regardless of the reason for termination, the Sub-Rep agrees that it will not compete with Representative within the states of Colorado and Utah. The noncompetition provisions hereof shall include any competition, direct or indirect, involving the provision of sales representation services to any Contract Principal, any other principal now or hereafter represented by Representative or any principal whose products are competitive with the lines represented by Representative. Indirect competition shall include but not be limited to competition as an independent contractor, employee, shareholder, officer, director, or in any other capacity whatsoever. The Sub-Rep shall cause each of its employees and sales agents to enter into a noncompetition covenant for the benefit of Representative, which noncompetition covenant shall be consistent with the covenants set forth herein. The Sub-Rep will be permitted to represent principals not represented by Representative within the state of Utah provided that such principals' products are not directly competitive with the Contract Principals' products and provided that revenues from such principals do not exceed 15% (fifteen percent) of Sub-Rep's gross revenues, except for Advanced Printed Circuits, Inc.

In addition, Sub-Rep after termination of this agreement will be specifically allowed to represent other contract principals even though they may be in direct competition with the contract principals subject



7. Enforcement. The parties acknowledge that any breach or threatened breach of the provisions of Paragraph 5 or Paragraph 6 above could cause immediate and irreparable damage to Representative and to its Contract Principals. It would not be possible to ascertain the monetary damages resulting from such a breach nor would such monetary damages provide adequate relief for Representative and its Contract Principals. Accordingly, the Sub-Rep agrees that upon the existence of any breach or threatened breach of the provisions of Paragraph 5 or Paragraph 6, Representative shall be entitled to a temporary restraining order, preliminary injunction, or other appropriate equitable relief.

8. Option to Merge. *At any time agreeable to both parties,* ~~After one year from the date of this agreement,~~ there shall be a mutually agreeable option to merge Harris Marketing, Inc. and Harris CSI, Inc. The terms of the merger shall be per the agreement in Exhibit B.

9. Term. This Agreement shall continue in effect for one year *and shall automatically be renewed each year unless* ~~or terminated as provided herein. This Agreement may be terminated at any time by the Representative for any reason not 60 days prior written notice is given.~~ *60 days prior written notice is given.* ~~terminated at any time by the Representative for any reason not 60 days prior written notice.~~

10. Miscellaneous.


(a) This Agreement is entered into in the state of Colorado and shall be governed in all respects with the laws of such state.

(b) This Agreement is binding upon and shall inure to the benefit of the respective parties and their respective successors and assigns.

(c) This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and may not be amended or modified except in writing subscribed to by both of such parties.

Dated effective the day and year first above set forth.

COMPONENT SALES, INC.

By: 

HARRIS MARKETING, INC.

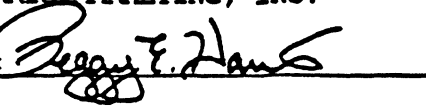
By: 

EXHIBIT A

Sales Representation Agreements - Contract Principals

Harris

~~Semiconductor Sales~~
Panasonic ~~Standard Components~~ Division

Unitrode

Seeq

~~Scarb~~

~~Bipolar Integrated Technology~~

Visnay

Semiconductor Technology Inc.

EXHIBIT B

This is a letter agreement concerning the formation of a new corporation to conduct a sales representative business in the State of Utah. For convenience, we will refer to the new corporation as the "Corporation," to Component Sales, Inc. as "CSI," to Martin Investments as "Martin," and to you as "Harris," but with the understanding that you also are agreeing on behalf of your corporation and will have the right to assign certain of your rights under this letter to your corporation.

We agree as follows:

1. Formation of Corporation. The Corporation will be incorporated by CSI attorneys in the State of Nevada. The Corporation will be established in standard form with a name to be mutually agreed to by us and with such other standard provisions for a Nevada corporation as may be recommended by our legal counsel. The Corporation will be duly qualified to conduct business in the State of Utah.

2. Stock Ownership. The Corporation will be capitalized at between \$5,000 and \$8,000, with each of the shareholders paying in cash for its proportionate share of the total stock.

3. Employment of Harris. Harris shall be employed by the Corporation devoting all of her time and efforts during normal business hours to the affairs of the Corporation, except as otherwise permitted below. Harris will enter into a standard employment agreement of the type which CSI has used for its key officers and managerial personnel, including a reasonable

non-competition covenant for the protection of the Corporation. This standard employment agreement will be subject to review and mutual satisfaction to Harris and CSI. Harris will be responsible for all of her own expenses incurred in connection with performing her duties. It is expressly understood that this agreement is contingent on an execution of said standard employment agreement.

In addition to the other special compensation provided for below,

Harris will receive ^{80%} a proportion of all gross commissions earned by her ^{on line provided to her by CSI, per Exhibit A} as follows: ^{for acquired after}

Annual Gross Sales

Commissions

First \$25,000

\$25,000 - \$50,000

\$50,000 - \$100,000

\$100,000 - \$112,500

\$112,500 - \$125,000

\$125,000 - \$137,500

\$137,500 and up

Percent of Commissions

to Harris

70%

73%

75%

76%

77%

78%

79%

*from Advanced
Printed Circuits.*

4. Existing Lines of Harris. Harris and any corporation controlled by her will immediately assign all lines and work in progress to the Corporation.

5. CSI Assignment. CSI will assign the accounts to the Corporation in Utah per Exhibit A.

6. Option for Further Purchases. CSI and Martin shall grant to Harris certain options as follows:

(a) Harris shall have the right to acquire up to a further five percent of the total outstanding stock of the corporation at a purchase price of \$1,000 for each one percentage

point purchased, provided that she continues to be employed by the Corporation and otherwise honors her agreements with the Corporation for one year.

(b) Initial ownership in the corporation shall be determined by valuing income from Act I and Act II vs income from the other product lines. Harris shall have 35% of the corporation and shall receive an additional 1/2% for each 1% that Act I and Act II income exceeds 35%. A "sanity check" will be taken looking at backlog.

(c) Over a period of five years on other mutually acceptable terms, Harris shall have the right to purchase the remainder of the stock of the Corporation at the fair market value of such stock. The fair market value of the Corporation used in determining the value of the shares of stock to be purchased shall be determined by valuing the Corporation at an amount equal to 100% of its gross revenues for its most recently completed fiscal year plus 100% of its shipped backlogs on hand at the time the option is exercised. Harris may purchase 100% of the corporation after one year if this is mutually agreeable between Harris, CSI, and Martin.

7. Management of the Corporation. Each of the shareholders of the Corporation shall have the right to designate one director of the Corporation until such time as Harris has acquired all of the issued and outstanding stock of the Corporation. Harris shall be the president of the Corporation and the parties shall agree to such other reasonable and standard terms as may be appropriate for the management of the Corporation.

8. Service Agreement. For so long as CSI is a shareholder of the Corporation, it will provide centralized management and other

services to the Corporation on terms similar to those applicable to those between CSI and its other affiliates.

9. Assurances. Each of the parties will warrant all information provided by it hereunder and indemnify against any liabilities caused by it.

10. Separation. At any time Harris and/or CSI want to part company Act I and Act II circuit board lines will be retained by Harris at no cost to her. All other lines will revert to CSI at no cost to it.

This letter is a letter of intent only but will provide a basis for more formal agreements among the parties. Please indicate your concurrence with the foregoing matters by signing and returning one copy of this letter to us.

The effective date of this agreement for all intents and purposes will be December 1, 1986.

Very truly yours,

James L. Martin, on behalf of Martin
Investments and Component Sales, Inc.

Agreed to this _____ day of ^{MARCH 1988}~~November 1986~~.

Peggy Harris, individually, and on
behalf of Harris ^{MARKETING}~~& Associates~~, Inc.

Appendix C



December 21, 1988

Mr. Jim Martin

President

Component Sales, Inc.

7108 S. Alton Way

Building E

Englewood, CO 80112

Re: Notification of Termination of Sales Representative Agreement

Dear Mr. Martin:

August 1, 1986, between Harris Corporation, acting through its Semiconductor Sector ("Harris") and Component Sales, Inc. ("Component"), Harris hereby gives Component a formal Notice of Partial Termination for Harris' convenience. This termination is effective for the territory of the State of Colorado and the State of Wyoming commencing on March 21, 1989 (90 days from the date of this notification).

As a termination of convenience, Component is entitled under the Agreement to and Harris will pay full commission earned by Component on sales and Distributor resales into the terminated territory made prior to the expiration of the notice and eighty percent (80%) of Component's then applicable commission rate on sales into the terminated territory (but not Distributor resales) made after the notice period based on orders booked prior to expiration of the notice period and scheduled for shipment within 12 months. We will review open orders through this period to be certain that all commissionable orders are credited to you.

Component is requested to cease all use of Harris Semiconductor trademarks and trade names in the terminated territory. Except as set forth in this letter, the agreement between Harris and Component, referenced above, continues in full force and effect.

Harris wishes you the best in your future endeavors. Should you have any questions or comments, please contact me at 407-729-5585.

Regards,

A handwritten signature in dark ink, appearing to read 'Gary P. Pinalli', written over a horizontal line.

Gary P. Pinalli
National Sales Director

cc: H.V. Criscito
P.E. Koester

12/21/88 14:27 1:18

Appendix D

SALES REPRESENTATIVE AGREEMENT

THIS AGREEMENT is made this 1ST day of MARCH, 1989, by and between HARRIS CORPORATION, acting by and through its Semiconductor Sector, P. O. Box 883, Melbourne, FL 32901 (hereinafter "HARRIS" or "HARRIS SEMICONDUCTOR") and HARRIS MARKETING, INC., 1834 W. Parkway Blvd., Salt Lake City, Utah 84119), hereinafter "REPRESENTATIVE".

The parties agree as follows:

1. DEFINITIONS

- (a) "Products" shall mean any part, semiconductor device or system offered for sale by Harris Semiconductor in the Territory and containing a brand or trademark of "GE", "GE Solid State", "RCA", "RCA Solid State", "Harris" or "Intersil".
- (b) "Territory" shall mean the geographic area or areas described in Exhibit A hereto, or such other territory as may from time to time be agreed to in writing, signed by duly authorized representatives of Harris and Representative.
- (c) "House Accounts" shall mean those purchasers of Products of Harris Semiconductor located within the Territory, which are designated from time to time in writing by Harris as House Accounts. House Accounts designated by Harris upon execution of this Agreement are set forth in Exhibit A.
- (d) "Key Accounts" shall mean those purchasers of Harris Semiconductor Products located within the Territory, which are designated from time to time in writing by Harris as Key Accounts and listed in Exhibit A. A Key Account will be serviced by Representative and a Harris sales team with the intention of providing special emphasis on sales and support. Sales from Key Accounts are considered primary in the future growth of Harris.
- (e) "Regular Accounts" shall mean any purchaser of Harris Semiconductor Products not defined in Paragraphs (c) or (d) above and shall be serviced by the Representative.
- (f) "Distributor" shall mean those persons, firms or organizations purchasing Harris Semiconductor Products for resale to customers in the Territory (excluding House Accounts) in accordance with distributorship agreements entered into from time to time with Harris.
- (g) "Commissions" shall mean Representative's compensation for performance of its duties hereunder at the rates set forth in Exhibit E, hereto, and as amended or modified in writing, and signed by duly authorized representatives of both parties.

- (h) For the purposes of this Agreement, "bookings" is understood to mean orders from customers that have been received, acknowledged and provided scheduled dates for shipment by Harris.
- (i) For the purposes of this Agreement, "billings" is understood to mean orders that have been physically shipped to a customer and for which the customer has been invoiced.
- (j) The words "we", "us", and "our" shall mean Harris.
- (k) The words "you" and "your" shall mean the Representative.
- (l) "Customer" shall mean an authorized Harris Distributor purchasing Products for resale or a manufacturer purchasing Products for incorporation in equipment he manufactures or otherwise for his own use.

2. APPOINTMENT

You accept appointment as a sales representative of our Products in the Territory, under the terms and conditions of this Agreement. The current Products are referenced in Exhibit B.

3. ACTIVITIES

In general, you will exercise your best efforts to promote the sales of our Products through contacting, soliciting purchases by, and servicing of Customers (actual and prospective) throughout the Territory. In particular, you will at your own expense;

- (i) maintain an office and sales organization in the Territory equipped and competent to perform all activities in connection with promoting the sale of our Products;
- (ii) assist us in establishing mutually acceptable realistic annual sales objectives for the Territory, against which your performance will be measured;
- (iii) demonstrate our Products and, when requested, assist us at selected trade shows in the Territory;
- (iv) identify any new Product requirements and new Customers, and submit to us a complete Marketing Inquiry Form (Exhibit C) pertaining to Customer inquiries for new Products;
- (v) assist us in training and support of our authorized Distributors, and assist the Distributors in promoting the sale of our Products;
- (vi) periodically submit to us your forecasts and reports of your activities in the Territory in connection with performance under the agreement, in a form designated by us;

- (vii) upon receipt, immediately forward to Harris, all original orders and any papers relating thereto, or any papers requiring our signature.
- (viii) provide for attendance of appropriate personnel all sales conferences, forecasting meetings and training seminars when requested by us;
- (ix) not represent an actual or prospective competing product line of any other source, as determined in our reasonable judgment, without our written consent;
- (x) assist us in handling Customer claims and inquiries;
- (xi) assist us in credit check of and collections from Customers, when we request same;
- (xii) maintain and furnish to us an up-to-date mailing list of Customers for mailing of product literature and the like;
- (xiii) treat the substantive provisions of this Agreement and other business information disclosed to you by us as confidential information; and
- (xiv) perform other reasonable activities within the general scope of this Agreement, when requested by us.

4. QUOTATIONS AND ORDERS

You will make quotations for Products strictly on prices and terms authorized by us. Our standard terms and conditions of sale in effect at the time of this Agreement are contained in Exhibit D. You will submit or request the Customer to submit all orders for Products to us at our nearest sales office. All orders shall be in writing either through the use of a Customer signed Harris quotation form, Customer purchase order, telecopy, customer letterhead or telex. In the latter three cases you will obtain and provide us with a confirming Customer purchase order within thirty (30) days of placing the original order.

An order will be considered "booked" only when and to the extent we issue a written Order Acknowledgment to the Customer from our Melbourne office. We reserve the right to reject orders, without incurring any liability to you.

You have no authority to accept orders or to modify them in any way, or to make any commitments purporting to bind us.

5. COMMISSIONS

Your remuneration under this Agreement is limited to Commissions. In general, you will earn a Commission on (i) our Product sales into the Territory to Customers (other than Distributors or House Accounts) against orders booked during the term of this Agreement, and (ii) Product resales during the term of this Agreement by our authorized Distributor locations in the Territory. Except for research and development orders for custom

and semicustom products, the Commission will be earned at the time of the sale or resale, that is, when the delivery is billed by us or the Distributor as the case may be.

The Commission rate will be a percentage of the net amount billed F.O.B. origin, "net" meaning exclusive of federal, state and local taxes, assessments and tariffs of any kind whatsoever, transportation charges, insurance, and any incidental fees or charges, and reflecting applicable discounts, credits, claims and price allowances.

The Commission rate is a variable percentage as set forth in Exhibit E based on a comparison of sales against an annual quota set by us and acknowledged by you. Each sales period your actual cumulative sales will be compared with the corresponding cumulative quota to the nearest whole percent and your Commission for the cumulative period will be adjusted and paid accordingly.

Sales involving more than one territory will ordinarily result in split Commissions among the respective sales representatives on the following basis: 50% to design-in, and 50% to order placement. Distributor resales, however, will be paid 100% ship-to-location by Zip code, except as otherwise noted in this Agreement or exhibit thereto. In no event will the sum of the split Commissions exceed the applicable Commission for a corresponding sale involving only one territory. In the event we change the split commission basis, we shall give you 60 days advance notice.

We recognize that controversies may from time to time arise between you and other representatives with regard to Commissions due for sales to Distributors or Customers, with such sales being made in one Representative's Territory to Customers doing business or accepting delivery in another Representative's Territory. You and we specifically understand and agree that we have the right to, and may, establish reasonable rules and regulations of general application subject to change from time to time governing the sales of Products, and you agree to abide by such rules and regulations. Any disputes with respect to allocations of Commission shall be submitted to us for reasonable adjustment and determination and such determination shall be binding and final upon you and all right to further adjudication on such matters is hereby waived. In addition, we reserve the right to allocate the entire Commission to the purchasing Territory for an order of \$1,000 or less.

We may at any time designate a Customer as a "House Account", by giving you sixty (60) days written notice. You will continue to earn full Commissions on our sales to the House Account and on Distributor resales to that account during the notice period and on our sales to the House Account (but not on Distributor resales to that Account) after expiration of the notice period based on the scheduled orders (scheduled delivery not exceeding 12 months) on backlog at the expiration of the notice period.

No Commission will be earned at any time on (i) Products we export from the U.S.; (ii) license or know-how agreements; (iii) non-recurring engineering charges on custom or special Products unless otherwise agreed in writing; (iv) qualification charges on Hi-Rel or other Products; (v) design and/or development contracts except as otherwise agreed; (vi)

Products shipped at no charge or for which the Customer has been given credit, whether for replacement under warranty, lost shipments or other Customer claims; (vii) samples or tools including PG tapes or equivalent or masks.

We reserve the right at any time to reduce your Commission rate on Distributor resales involving a volume purchase agreement between us and our Customer where the purchase agreement prices to the Customer are discounted to the Distributor.

We will be entitled to set off against your account any Commission you have earned on the sale or resale or a Product subsequently returned for credit or reimbursement; shipments previously credited to you for sales by any Distributor to a subsidiary, affiliate or branch thereof or to any other Distributor; shipments erroneously credited or paid to you for any reason; or for which the Customer fails to pay after normal collection procedures. In any case, we reserve the right to withhold payment of your Commission until the Customer pays us.

You agree to submit any claim of dispute you may have related to or arising out of the payment of commissions hereunder in writing to us within thirty (30) days after you know of or have reason to know of the basis for the claim or dispute. Failure to give timely notice shall relieve us from any and all liability for such claim or dispute. The provisions of this paragraph shall survive the termination of this Agreement.

We reserve the right at any time with ninety (90) days written notice to you to change the Commission rate on specific Products or involving specific Customers, or both, in what we deem to be unusual circumstances. If we make any such change it will not apply to sales against orders booked prior to the expiration date of the notice period, but only to orders booked thereafter.

We may at any time increase or decrease the geographic Territory by giving you sixty (60) days written notice. With respect to sales into the increased portion of the Territory, you will earn a commission equal to twenty (20%) percent of your then applicable rate on sales (but not distributor resales) after the notice period based on orders booked prior to expiration of the notice period. With respect to sales into the decreased portion of the Territory, you will earn a full commission on sales and Distributor resales on sales made during the notice period and eighty (80%) percent of your then applicable rate on sales (but not on Distributor resales) after the notice period of orders booked prior to expiration of the notice period.

For Custom and Semicustom device contracts pertaining to Research and Development (including studies) or portion of such negotiated contracts awarded to us, you will earn a commission of 10% on the amount secured and entered into the order entry system. "Development" is defined as any effort involving design, layout, mask fabrication, wafer fabrication and delivery of functional samples and/or prototypes. Non-recurring engineering charges such as preliminary tooling, test program generation, qualification charges etc., if included in the basic contract, are

considered Development and are commissionable. Such Development orders are commissionable and payable at the time of order entry. Payments are to be made in accordance with Paragraph 6. Specifically excluded as Development are production tooling, "full-up" qualification units, pre-production units, first article units and production units. Special charges such as technology transfer and test equipment are not commissionable. The maximum commission payable on any Development program shall be \$50,000. Add-ons or additional Development orders arising out of orders on which a commission has already been paid will not be commissionable. With respect to cost reimbursable type contracts, the Commission Rate will be a percentage of the net amount of the original negotiated estimated cost exclusive of Facilities Capital Cost of Money (FCCOM) and Negotiated Fee plus any additional negotiated cost related to changes in scope. Additional negotiated cost related to changes in scope not including cost overruns is commissionable.

6. COMMISSION PAYMENTS

We will pay you your earned Commissions, less applicable setoffs if any, within six (6) weeks after the end of the period (our fiscal "month") in which they are earned. However, payment of Commissions earned on Distributor resales is contingent on our receipt of the Distributor's resale report for the period in question.

7. TERM OF AGREEMENT

This Agreement will commence on the date first written above and will continue in effect until terminated by either party.

Either you or we may terminate this Agreement for convenience at any time by written notice to the other.

We may terminate this Agreement in whole or in part for convenience by giving not less than thirty (30) days prior written notice. On termination for convenience you will continue to earn full commissions on our sales and Distributor resales made prior to expiration of the notice period and eighty (80%) percent of your then applicable commission rate on sales (but not Distributor resales) made after the notice period based on orders booked prior to expiration of the notice period and scheduled for shipment within six (6) months.

You may terminate this Agreement for convenience by giving not less than thirty (30) days prior written notice. On termination for your convenience you will continue to earn full Commissions on our sales (but not on Distributor resales) made prior to expiration of the notice period.

We may also terminate this Agreement for your default if (i) you fail to perform the material obligation required by this Agreement, including but not limited to obligations set forth in paragraph 3; (ii) a trustee in bankruptcy or a receiver is appointed for you or you make an assignment for the benefit of creditors; (iii) you submit to us, or any government contractor Customer or the Government any false or fraudulent reports or statements concerning Harris or its Products; (iv) you violate any law or

regulation of any state or territory including the export administration and control laws and regulations of the U.S. or any amendments thereto.

With respect to (i) above, we shall give you written notice of such failure and you shall have thirty (30) days from the date of such notice to correct such failure to our satisfaction. In the event that you do not correct such failure by the end of such period or that you acknowledge to us you are unable or unwilling to correct such failure at any time during such period, then this Agreement will terminate on the sixtieth day after said notice for your default. With respect to (ii), (iii) or (iv) above, we may terminate this Agreement for your default immediately by giving you written notice of termination. You will continue to earn Commissions on our sales (but not on the Distributor resales) made prior to expiration of the notice period under (i) or termination under (ii), (iii) or (iv) above.

Commission payments will be made in the manner provided in Article 6, above. The foregoing provisions of this Article 7 constitutes our sole liability and your exclusive remedy for termination of this agreement. Neither you nor we shall by reason of the termination or non-renewal of this Agreement be liable to the other for compensation, reimbursement or damages either on account of present or prospective profit or commissions, or on account of expenditures, investments or establishment, development or maintenance of the business or good will of Harris or yourself, or on account of any other cause or thing whatsoever, provided, however, that such termination or non-renewal shall not affect the rights or liabilities of the parties with respect to commissions earned in accordance with Article 5.

IN NO EVENT SHALL EITHER YOU OR HARRIS BE LIABLE TO THE OTHER FOR LOSS OF PROFIT OR REVENUES, LOSS OF GOOD WILL, LOSS OF BUSINESS OPPORTUNITIES OR SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER.

You agree to dispose of any materials we have furnished to you in accordance with our instructions, and to cease any and all use of our names and trademarks in conjunction with any of your activities, promptly on termination of this Agreement.

During the term of this Agreement and for a period of one (1) year after termination, we and you agree not to disclose to any third person any confidential information of the other party learned as a consequence of performance under this Agreement.

8. MISCELLANEOUS PROVISIONS

- (a) Relationship. You are an independent contractor whose sole authority under this Agreement is to solicit orders in lawful and ethical manner for acceptance by us. You are solely responsible for the control, direction and employment of your employees. You agree to hold us harmless from any claims or damages arising from your having exceeded your authority hereunder.

- (b) Compliance with Laws. You agree you will conduct your operations and activities in the performance of this Agreement in compliance with all applicable laws and regulations.
- (c) Assignment. You understand that you have no right to assign this Agreement to any other party without our prior written consent. If you make an assignment in whole or in part, including but not limited to an assignment of any sums payable by us hereunder without our consent, we may elect to disregard such assignment.
- (d) Notices. Any notice required by this Agreement must be in writing addressed to the other party at its address indicated herein or to such change of address as has been given by notice, and sent by certified or registered mail, postage prepaid or by overnight delivery. The notice will be effective on date of mailing.
- (e) Waivers. Our failure to promptly enforce any right or remedy to which we may be entitled herein will not constitute a waiver of that right or remedy.
- (f) Setoffs. We reserve the right to set off any amount you owe us against any sum we owe you.
- (g) Entire Agreement. This Agreement, Attachments and Addenda hereto constitute the entire agreement between you and us as to the subject matter herein, integrates all discussions and understandings leading up to this Agreement, and supersedes all prior agreements between you and us pertaining to that subject matter. No modification of this Agreement will be deemed effective unless made in writing signed by you and one of our authorized offices.
- (h) Governing Law. This Agreement is to be construed and enforced according to the law of the State of Florida, U.S.A.

HARRIS CORPORATION
SEMICONDUCTOR SECTOR

By: _____

Printed Name: _____

Title: _____

REPRESENTATIVE (Name of Company)
HARRIS MARKETING, INC.

By: Peggy E. Harris

Printed Name: PEGGY E. HARRIS

Title: PRESIDENT

DOMESTIC SALES REPRESENTATIVE AGREEMENT
LIST OF ATTACHMENTS

- EXHIBIT A: Territory
- EXHIBIT A-2: Military and Aerospace House Programs and House Accounts
- EXHIBIT A-3: Commercial Products House Accounts
- EXHIBIT B: Product List (noting any exclusions)
- EXHIBIT C: Marketing Inquiry Form
- EXHIBIT D: Terms and Conditions of Sales (in effect on date of this Agreement)
- EXHIBIT E: Representative Commission Payment Schedule

EXHIBIT A

HARRIS SEMICONDUCTOR
SALES REPRESENTATIVE AGREEMENT

Dated:

1. TERRITORY

The following Territory is hereby assigned for the sale of Products as described in this Agreement.

Wyoming 82xxx Idaho 837xx Colorado 81xxx 913xx 815xx
Montana 59xxx Utah 84xxx 812xx 914xx 816xx

2. HOUSE ACCOUNTS: MILITARY & AEROSPACE DIVISION

Any programs within the territory which are contracted to said Customers by Maryland Procurement Agency (National Security Agency) in which Harris is a directed source. Any programs within the territory which are classified by Harris Military and Aerospace Division as a strategic military program to include as a minimum any portion and/or all of each of the following programs: Trident, Minuteman, MX/Peacekeeper, MK-21, MK-21A, Pen Aids, Re-entry Vehicle Programs, and derivatives thereof. MX/Peacekeeper Re-entry Programs and derivatives, and SICBM Midgetman. Military and Aerospace Division, at its sole discretion, may from time to time add further exclusions when warranted.

U.S. Government Agencies.

Any SDI/Focal Plane program.

3. KEY ACCOUNTS

The following designate Key Accounts as provided by Article I of this Agreement:

4. REGULAR ACCOUNTS

All accounts not listed in Exhibit A, Articles 2 and 3 above.

HARRIS MARKETING, INC.

By: [Signature]
Printed Name: PEGGY E. HARRIS
Title: PRESIDENT
Date: MARCH 20, 1989

Harris Corporation
Semiconductor Sector

By:
Printed Name:
Title:
Date:

EXHIBIT B

PRODUCT LIST

- o All products manufactured by HARRIS SEMICONDUCTOR COMMERCIAL PRODUCTS GROUP. Reference the current HARRIS Cost and Resale schedule.

- o HARRIS SEMICONDUCTOR MILITARY AND AEROSPACE DIVISION'S Communications, strategic, tactical and Standard Data Sheet Products. Reference Data Sheet Products price list.



MARKETING INQUIRY

ATTACH ALL SUPPORTING DOCUMENTS AND FORWARD TO PRODUCT MARKETING.

CUSTOMER INFORMATION ALWAYS FILL IN LINES 1, 2, AND 3 COMPLETELY	1	INITIATED BY	DATE INIT.	TERR. CODE	DATE DUE
	2	CUSTOMER NAME & DIV.	LOCATION		CUST. CODE
	3	CUSTOMER CONTACT	CUSTOMER SPEC. NO.	REV. NO.	REV. DATE

PRODUCT INQUIRY: A RFQ NEW CUST. SPECIAL B RFQ REVISION OF ESTABLISHED SPECIAL C RFQ ESTABLISHED SPECIAL NOT REVISED D RFQ STANDARD PRODUCT E SAMPLES F _____	CHECK TYPE OF PRODUCT INQUIRY AT LEFT AND FILL IN LINES 4, 5, 6, 7, 8 BELOW. DO NOT FILL IN LINES 9, 10.				
	4	PRODUCT CLASSIFICATION	MIL. <input type="checkbox"/>	DEVICE TYPE	PROD. MKTG. ROUTING
	5	INQUIRY IDENTIFICATION PROGRAM AGENCY DEL. QTY. AND DATE			
	6	SEMICONDUCTOR QUANTITY POTENTIAL	PRICE REQ'D	DOLLAR POTENTIAL	% PROB. AWARD DATE EST.
	7	COMPETITIVE SITUATION <input type="checkbox"/> FIRM <input type="checkbox"/> ESTIMATES			
	8	SAMPLES: QUANTITY REQUIRED:	ARE SAMPLES TO BE USED FOR LIFE AND/OR ENVIRONMENTAL TEST <input type="checkbox"/> YES <input type="checkbox"/> NO		TEST SAMPLES TO: GROUP A <input type="checkbox"/> OTHER <input type="checkbox"/>

DATA REQUEST: G RELIABILITY DATA H DEVICE DATA J FAILURE ANALYSIS K O/C DOCUMENT REVIEW L APPLICATION ASSISTANCE	CHECK TYPE OF DATA REQUEST AT LEFT AND FILL IN LINES 9 AND 10. DO NOT FILL IN LINES 4, 5, 6, 7, AND 8.		
	9	HARRIS TYPE NUMBER	LINE SOURCE
	10	LEVEL OF REQUEST: <input type="checkbox"/> ENGINEERING JUDGEMENT <input type="checkbox"/> LIMITED ENGINEERING EFFORT <input type="checkbox"/> FORMAL PROPOSAL (ATTACH JUSTIFICATION)	

DETAILS OF REQUEST:

QUOTE NUMBER

SIGNATURE OF PERSON ANSWERING

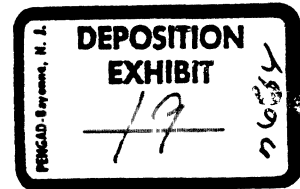
DATE

ATTACHMENT E

REPRESENTATIVE COMMISSION PAYMENT SCHEDULE

<u>Cumulative % of Plan</u>	<u>Commission Rate</u>
75%	4.000%
76	4.020
77	4.040
78	4.060
79	4.080
80	4.100
81	4.120
82	4.140
83	4.160
84	4.180
85	4.200
86	4.220
87	4.240
88	4.260
89	4.280
90	4.300
91	4.320
92	4.340
93	4.360
94	4.380
95	4.400
96	4.420
97	4.440
98	4.460
99	4.480
100	4.500
101	4.525
102	4.550
103	4.575
104	4.600
105	4.625
106	4.650
107	4.675
108	4.700
109	4.725
110	4.750
111	4.775
112	4.800
113	4.825
114	4.850
115	4.875
116	4.900
117	4.925
118	4.950
119	4.975
120% - over	5.000

Appendix E



Mr. Jim Martin
President
Component Sales, Inc.
7108 S. Alcon Way
Building E
Englewood, CO 80112

Re: Notification of Termination of Sales Representative Agreement

Dear Mr. Martin:

Further to Mr. Gary Pinelli's letter of December 21, 1988 in which Harris Semiconductor issued a partial Termination for Convenience to Component Sales, Inc. ("CSI") for the territory of Colorado and Wyoming. At the same time Harris Semiconductor entered into a new sales representative agreement with Harris Marketing Inc. (formerly Harris/CSI, a partially owned subsidiary of Component Sales, Inc.) It was Harris Semiconductor's understanding that the substituted agreement and the partial termination taken together effectively ended the contractual relationship of sales representation between CSI and Harris Semiconductor. It was further our understanding from your visit to Harris Semiconductor in early 1989 that you were aware of our belief and concurred with it.

It has come to our attention that the relationship between CSI and Harris Marketing Inc. is not the relationship originally understood by Harris Semiconductor. We now believe that Harris Semiconductor-Harris Marketing Inc. agreement is not being treated as a substitute for the unterminated territory of the Harris Semiconductor-CSI agreement, but as a separate, independent relationship.

It has generally not been Harris Semiconductor's business philosophy or practice to maintain two independent sales representatives in the same geographical territory maintaining the same product line. Therefore, we would like to clarify Harris Semiconductor's position vis a vis CSI. Harris Semiconductor considers the relationship between Harris Semiconductor and CSI terminated completely and irrevocably as of March 21, 1989 for all of the territory previously covered by CSI. Harris Semiconductor has consistently treated sales into Montana, Idaho and Utah since that date in accordance with this position.

If you have any questions, please address them to Phil Koester or myself.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Howard E. Rothman".

Howard E. Rothman
Senior Counsel

cc: P. Koester

Appendix F

THIS AGREEMENT is made and entered into this ____ day of _____, 19____, by and between Harris Marketing, Inc. and Component Sales, Inc., also known as The ProMark Group, Inc. and Utah Component Sales Inc.

WHEREAS, on or about October 1, 1988 the parties entered into a sub-representative agreement, subsequent to which Harris Marketing, Inc. became the independent sales representative for Harris Semiconductor; and,

WHEREAS, a dispute has arisen between the parties regarding that sub-representative agreement and Harris Marketing's current position as the independent sales representative for Harris Semiconductor and the contract resulting therefrom, as a result of which no litigation has yet been filed, but which litigation has been considered; and,

WHEREAS, the parties have reached an agreement resolving the dispute between the parties and they desire to memorialize the terms of that agreement.

NOW, THEREFORE, in consideration of the amounts paid pursuant hereto, the representations made herein and other good and valuable consideration, the sufficiency and receipt whereof are hereby acknowledged, it is agreed as follows:

1. That Harris Marketing, Inc. agrees to pay to Component Sales, Inc. the sum of Fifteen Thousand Dollars (\$15,000.00) representing compensation pursuant to the sub-representative agreement by and between the parties and the subsequent contracting between Harris Marketing, Inc. and Harris Semiconductor and any alleged breach of contract due to that contracting, and including interest and attorney's fees, payable as follows:

the delivery of the signed Settlement Agreement and Release;

Seven Thousand Five Hundred Dollars (\$7,500.00) shall be payable within one month of the date of the signing of this Settlement Agreement and Release;

Two Thousand Five Hundred Dollars (\$2,500.00) shall be payable within two months of the date of the signing of this Settlement Agreement and Release.

2. That Component Sales, Inc. hereby releases Harris Marketing, Inc. and its employees and agents from any and all liability associated with the sub-representative agreement dated October 1, 1988 by and between the parties or any predecessor agreements, and the subsequent relationship entered into between Harris Marketing, Inc. and Harris Semiconductor and related entities. Specifically, Component Sales, Inc. hereby releases Harris Marketing, Inc. from any and all restrictions, obligations and non-competition covenants within the sub-representative agreement dated October 1, 1988 by and between the parties

3. That Component Sales, Inc. ^{and Harris Marketing} agrees that it will keep the terms, amount and fact of this Agreement completely confidential and that it will not hereafter disclose any information concerning this Agreement to anyone. Both parties agree that, although damage is difficult to determine, Component Sales, Inc. will pay Harris Marketing, Inc. the sum of Ten Thousand Dollars (\$10,000.00) if it at any time discloses the fact, amount or terms of this Agreement. Any inquiry about the outcome of this claim to Component Sales, Inc. or its attorney will be answered as follows: "The matter has been resolved and the agreement is confidential." In the event that a court of competent

jurisdiction orders Component Sales, INC. to disclose the agreement, said disclosure shall not be considered a breach of this non-disclosure clause.

4. The parties executing this Agreement shall take further action and execute and deliver such further documents which the other party may reasonably require and find necessary in order to carry out the provisions of this Agreement.

5. This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been relied upon by either party. Each party has relied upon its own examination of the full agreement and the provisions hereof and expressly contained in the Agreement itself. No modification or amendment of this Agreement shall be of any force or effect unless in writing and executed by both parties.

6. This Agreement shall be interpreted in accordance with the laws of the State of Utah.

7. This Agreement shall apply to, be binding upon and enure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

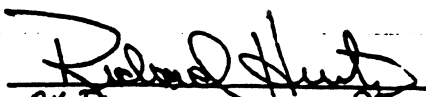
HARRIS MARKETING, INC.

By Peggy E. Harris, President

UTAH COMPONENT SALES, INC.

UTAH COMPONENT SALES, INC.

By: Richard Hintze President
By: James Martin, President


By Richard Hintze President
By James Martin, President

~~of Peggy Harris~~
jurisdiction orders Component Sales, Inc. to disclose the agreement, said disclosure shall not be considered a breach of this non-disclosure clause.

4. The parties executing this Agreement shall take further action and execute and deliver such further documents which the other party may reasonably require and find necessary in order to carry out the provisions of this Agreement.

5. This Agreement contains the entire agreement between the parties. No promise, representation, warranty or covenant not included in this Agreement has been relied upon by either party. Each party has relied upon its own examination of the full agreement and the provisions hereof and expressly contained in the Agreement itself. No modification or amendment of this Agreement shall be of any force or effect unless in writing and executed by both parties.

6. This Agreement shall be interpreted in accordance with the laws of the state of Utah.

7. This Agreement shall apply to, be binding upon and enure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HARRIS MARKETING, INC.

1

By Peggy E. Harris, President